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X was organized in Year 1 under the laws of State. For all relevant taxable years, including Year 2 and Year 3, X was a closely held C corporation for purposes of

§ 469 and earned portfolio income in each of those years. On Date 1, X had a change of ownership and ceased to be closely held C corporation for the purposes of § 469 for Year 4. X had net operating losses in Year 4.

LAW AND ANALYSIS

Section 469 disallows the passive activity loss and the passive activity credit for the taxable year of individuals, estates, trusts, and certain types of corporations. A “passive activity” includes a trade or business activity in which the taxpayer does not materially participate. Section 469(c)(1). Taxpayers can own passive activities directly, through passthrough entities, or through certain C corporations.

In general, a taxpayer's “passive activity loss” for a taxable year equals the amount by which the taxpayer's deductions from passive activities (passive activity deductions) exceed the taxpayer's gross income from passive activities (passive activity gross income) for the taxable year. Section 469(d)(1) and § 1.469-2T(b).

Passive activity gross income and net active income do not include “portfolio income,” as defined in § 469(e)(1) of the Code and § 1.469-2T(c)(3)(i) of the regulations. Portfolio income generally includes gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business.

In general, a closely held C corporation for purposes of §469 is a C corporation where at any time during the last half of the last taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals.

Section 172(a) allows a deduction equal to the aggregate of the NOL carryovers and carrybacks to the taxable year. Section 172(b)(1)(A)(i) provides that an NOL for any taxable year generally must be carried back to each of the 2 years preceding the taxable year of the NOL. Additionally, section 172(a)(1)(H) allows taxpayers to elect to carry back an applicable net operating loss which the taxpayer has accrued in 2008 or 2009 for a period of 3, 4, or 5 years, to offset taxable income in those preceding taxable years.

CONCLUSION

Based solely upon the information submitted, we conclude that section 469 does not prevent X from carrying back net operating losses that accrue in years after Year 3 when X is not a closely held C corporation under section 469 to offset portfolio income earned in years in which X was a closely held C corporation.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

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